

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Candace Taylor	Team: Squad #6	CCRB Case #: 201409946	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/19/2014 9:10 PM	Location of Incident: 2073 2nd Avenue	Precinct: 23	18 Mo. SOL 3/19/2016	EO SOL 3/19/2016	
Date/Time CV Reported Sat, 09/27/2014 11:46 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 09/27/2014 11:46 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Erin Barnes	03059	920008	GANG M
2. POM Liam Ohara	20203	946632	GANG M

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Victor Charles	06096	941538	023 PCT
2. POM Thomas Cozart	28181	938283	PBMN SU
3. DT3 Jamal Hairston	00203	941875	NARCBMN

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Erin Barnes	Abuse: Det. Erin Barnes stopped § 87(2)(b)	
B.DT3 Erin Barnes	Abuse: Det. Erin Barnes frisked § 87(2)(b)	
C.DT3 Erin Barnes	Discourtesy: Det. Erin Barnes spoke discourteously to § 87(2)(b)	
D.DT3 Erin Barnes	Abuse: Det. Erin Barnes refused to provide his shield number to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On September 27, 2014, § 87(2)(b) filed this complaint via the Call Processing System with the CCRB.

On September 19, 2014, at approximately 9:10 p.m., § 87(2)(b) was stopped by Det. Erin Barnes of Manhattan Gang Squad as he left a liquor store, House of J and H liquor, located at 2073 Second Avenue in Manhattan (**Allegation A**). Det. Barnes grabbed § 87(2)(b)'s wrist and told § 87(2)(b) to place his hands above his head and to lock his fingers together. Det. Barnes proceeded to frisk the outer layer of § 87(2)(b)'s clothing, under his unzipped jacket, and his waistband and pockets (**Allegation B**). Det. Barnes told § 87(2)(b) "It's hot as a motherfucker out here and you're wearing that jacket" (**Allegation C**). § 87(2)(b) asked Det. Barnes for his shield number but Det. Barnes did not respond and turned away from § 87(2)(b) (**Allegation D**). § 87(2)(b) did not receive any summonses and was not arrested for this incident (encl. D 1-5). § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

This case was initially assigned to Investigator Nicholas Carayannis on October 27, 2014, and was reassigned to Investigator Candace Taylor on April 20, 2015.

Mediation, Civil and Criminal Histories

Both mediation and investigation were offered to § 87(2)(b) on October 2, 2014, but he was unsure if he wanted to move forward with the complaint. However, on October 6, 2014, § 87(2)(b) stated that he wanted to move forward with investigation (encl. L 2). As of January 22, 2015, § 87(2)(b) has not filed a Notice of Claim with the City of New York regarding this incident and has no criminal case for this complaint (encl. L 6). § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the second CCRB complaint filed by § 87(2)(b) (encl. B 6).
- Det. Barnes has been a member of the NYPD for 17 years and has had 2 previous CCRB allegations which were substantiated (encl. B 1-3).
 - In CCRB case 200306205, allegations of a search and detainment were substantiated. The board recommended charges for both allegations and the NYPD penalty were instructions.
- PO O'Hara has been a member of the NYPD for 6 years and has had 2 previous allegations in which substantiated allegations were recommended (encl. B 4-5).
 - In CCRB case number 201210366, an allegation of stop was substantiated and the Board recommended Command Discipline. The NYPD decided do DUP the case and no penalty was received.
 - In CCRB case number 201306106 an allegation of retaliatory summons was substantiated and the board recommended instructions. The NYPD concurred with the Board's recommendation.

Findings and Recommendations

Explanation of Subject Officer Identification

During his phone statement on October 2, 2014 and CCRB interview on October 27, 2014, § 87(2)(b) consistently described Det. Barnes as a black male between approximately 6'0" and 6'4" tall, muscular build with short black hair and no facial hair (encl. D 3-10). § 87(2)(b) also provided a physical description of PO O'Hara on both occasions and described him as a white male with a buzzed haircut and thick moustache. Officer photos were obtained of both Det. Barnes and PO O'Hara are a match for the descriptions provided by § 87(2)(b). As per his MOS photo, Det. Barnes is a 6'1, black male, bald with no facial hair. PO O'Hara is a 6 foot tall, white male with short hair. While his MOS photo does not indicate that he has a moustache, during his CCRB interview, Det. Barnes confirmed that PO O'Hara has a full beard and moustache (encl. F 1-5). Moreover, on June 17, 2015, § 87(2)(b) appeared for a photo array viewing, at which time he recognized and identified Det. Barnes as the subject officer in the incident (encl. D 1-12).

Both officers denied interacting with § 87(2)(b) but do state that they were working on the incident date and vicinity of where the alleged encounter occurred (encl. F5 and G4). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation A- Abuse of Authority: Det. Erin Barnes stopped § 87(2)(b)

Allegation B- Abuse of Authority: Det. Erin Barnes frisked § 87(2)(b)

Allegation C- Discourtesy: Det. Erin Barnes spoke discourteously to § 87(2)(b)

Allegation D- Abuse of Authority: Det. Erin Barnes refused to provide his shield number to

§ 87(2)(b)

§ 87(2)(b) testified that on September 19, 2014, at approximately 9:10pm, he was inside House of J and H liquor store, located at 2073 Second Avenue in Manhattan. As he purchased a small bottle of alcohol he noticed Det. Barnes of Manhattan Gang Squad standing behind him. PO O'Hara, who was identified via investigation, stood at the back of the store. As § 87(2)(b) turned to leave, Det. Barnes grabbed § 87(2)(b)'s wrist and said, "You know what this is. Come on." § 87(2)(b) left the store with Det. Barnes and was told to put his hands above his head, locking his fingers together. § 87(2)(b) began to speak but was cut off by Det. Barnes, who said, "I will tell you why I stopped you in a second" and proceeded to frisk the outer layer of § 87(2)(b)'s clothing, under his jacket, which was unzipped prior to the incident and then frisked his waistband and pockets. After Det. Barnes frisked § 87(2)(b) he said, "It's hot as a "motherfucker" out here and you're wearing that jacket." § 87(2)(b) stated that he did not remember the exact expletive, but believed it could have been, "motherfucker", "bitch" or "shit." In his phone statement which was received on October 2, 2014, § 87(2)(b) stated that Det. Barnes said something to the effect of "It's hot as a motherfucker out here and you got on that coat," and in the photo array viewing on June 17, 2015, he stated that Det. Barnes said something along the lines of, "It is hot as "shit" or "fuck" out here" § 87(2)(b) did not respond to Det. Barnes' comment, instead he pointed out other individuals on the street who were also wearing

jackets. § 87(2)(b) then asked Det. Barnes for his name or shield number but he did not respond. He was released without a summons or arrest.

In his CCRB statement on May 5, 2015, Det. Barnes stated that he did not have an independent recollection of the incident but acknowledged that he was assigned to the precinct of occurrence on the day of the incident. Det. Barnes' memo book confirmed that he participated in an arrest in the neighboring precinct at approximately 10:15 p.m., at least an hour after the incident alleged by § 87(2)(b). During his tour, both he and PO O'Hara carried out gang enforcement duties that entailed driving around to observe criminal activity and conducting investigations of perceived crime. Det. Barnes confirmed that he and PO O'Hara left their unmarked vehicle several times throughout their tour and did not separate at any time. Det. Barnes stated that he would have been around bodegas in the assigned precincts. He also stated that he would have passed the incident location when they patrolled the 23rd Precinct, which is the precinct of occurrence, but did not recall being there on the incident date.

Det. Barnes did not recall interacting with § 87(2)(b) or being in House of J and H liquor store at 2073 Second Avenue on the incident date but acknowledged that he was familiar with the area and recognized the incident location when presented with a photograph taken by the CCRB. Det. Barnes denied stopping and frisking § 87(2)(b) and when Det. Barnes was presented with a photograph of § 87(2)(b), Det. Barnes did not recognize him. Det. Barnes did not recall having any conversation with § 87(2)(b) and did not say, "It's hot as a motherfucker out here and you're wearing that jacket." Det. Barnes did not recall refusing to provide his shield number after § 87(2)(b) requested that information (encl. F 1-5).

During his CCRB statement on May 27, 2015, PO O'Hara corroborated Det. Barnes' statement that both officers were assigned to the precinct of occurrence and left their vehicle multiple times throughout their tour but did not separate at any time. PO O'Hara did not recall seeing Det. Barnes grab and escort § 87(2)(b) out of the store at 2073 Second Avenue and he did not see Det. Barnes frisk § 87(2)(b). PO O'Hara did not recall hearing any conversation between § 87(2)(b) and Det. Barnes in which the detective told § 87(2)(b) to put his hands above his head. PO O'Hara did not recall hearing Det. Barnes tell § 87(2)(b) "It's hot as a motherfucker out here and you're wearing that jacket," and did not recall hearing § 87(2)(b) ask Det. Barnes for his shield number (G 1-4).

PO O'Hara also corroborated that he and Det. Barnes carried out an arrest around 10 p.m. in the 25th Precinct, which was reflected in his memo book. However, PO O'Hara stated that he did not have any recollection of interacting with § 87(2)(b) or being present for this incident. When presented with a photograph of § 87(2)(b), PO O'Hara did not recognize him. PO O'Hara did not recall seeing Det. Barnes engaged in any conversation with § 87(2)(b). PO O'Hara did not recall if he passed the incident location while he was on patrol and stated that he was not familiar with any particular bodegas or liquor stores in the vicinity of the incident location.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Though § 87(2)(b) stated that a cashier was a witness to the officers being present when § 87(2)(b) was approached, attempts to the owner of the liquor store was uncooperative with identifying the cashier.

An officer is allowed to stop, frisk and search an individual when he/she reasonably suspects a person has committed, is committing or is about to commit a felony or misdemeanor. An officer must release the person immediately after completing an investigation if probable cause to arrest does not exist and provide said individual with an explanation for the stop, question and/or frisk search encounter. NYPD Patrol Guide Section 203-11 (encl. A 5-8). In the absence of any concrete indication of criminality, an officer can approach an individual for the purpose of requesting information. However, police action must be justified by some sufficient and articulable reason. *People v. DeBour*, 40 N.Y. 2d210 (1976) (encl. A 12 -23). An officer is prohibited from using discourteous or disrespectful remarks regarding another person's ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability. NYPD Patrol Guide Section 203-10 (encl. A 2-4). When interacting with the public, an officer must courteously and clearly state his/her rank, name, shield number and command, or otherwise provide them, to anyone who requests the officer to do so and allow said person ample time to note this information. NYPD Patrol Guide Section 203-09 (encl. A1).

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

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Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date